

## REMARKS

### Claim Status

Claims 1-2, 7, 10, 15-16, 18, and 23-43 are pending in the application. Claims 1, 27 and 35 have been amended to recite that the shave gel product has no more than 5% of an ionic surfactant. Support for this amendment is available in the Specification at page 2, second full paragraph. New Claims 41 – 43 have also been added. Support for this amendment is available in the Specification at page 2, second full paragraph.

No new matter is believed to have been entered. As such, Applicants request that these claims be admitted.

### Rejection Under 35 U.S.C. § 103(a) Over Gray in view of Marchesi and Schmitt

Claims 1, 2, 7, 10, 15, 16, 18 and 23-40 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,772,203 to Gray in view of US Patent No. 6,682,726 to Marchesi, further in view of US Patent No. 3,866,800 to Schmitt. Applicants respectfully disagree.

To establish a *prima facie* obviousness of a present invention, all the claim elements must be taught or suggested by the prior art reference. *See In re Royka*, 490 F.2d 981 (C.C.P.A. 1974); MPEP § 2143.03. Furthermore, references relied upon to support a rejection under 35 U.S.C. § 103 must provide enabling disclosure, i.e., they must place the recited invention in the possession of the public. *In re Payne*, 606 F.2d 303 (C.C.P.A. 1979). Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the “burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.” *In re Warner*, 379 F.2d 1011, 1016 (C.C.P.A. 1967).

Applicants respectfully submit that the cited references fail to teach or suggest each and every element of the post-foaming shave gel of the present invention. In

particular, the cited references fail to teach or suggest the shave gel product of the present invention, comprising no more than 5% of any ionic surfactant. *See* Claims 1, 27, and 35.

Applicants direct attention to the specification as filed at page 2, second full paragraph which explains:

Preferred post-foaming shave gels have a shave gel base that includes a non-ionic surfactant emulsifier, rather than a soap. By "non-ionic" is meant that there is no more than 5%, preferably less than 3%, by weight of any ionic surfactant in the formulation. More preferably, there is no more than 1.5% by weight of any ionic surfactant in the gel compositions. Thus, the preferred shave gels are substantially free of soaps and of anionic surfactants. The non-ionic, soap-free formulation is compatible with and stable in the presence of the actives that are used to generate the warm sensation. The non-ionic shave gel base may also offer additional advantages such as alleviating the problems associated with soap-based products. The shave gel base preferably includes an emulsifier system that

Applicants submit that the cited references, alone or in combination fail to teach or suggest the specific surfactant system arrived at in the present invention. In particular, Applicants submit that the cited references fail to teach or suggest the specific levels of ionic surfactant for use in the shave gel. As explained in the quote above, "the non-ionic shave gel base may also offer additional advantages such as alleviating the problems associated with soap-base products."

In contrast to the present invention, the cited references actually include certain ionic surfactants. For example, Gray at col. 6, lines 10 – 35 explains that soaps are used in the Gray shaving preparation (the first 7 lines being reproduced below for reference):

In shaving preparations, the shaving emulsion dispensed from one compartment of a pressurized container comprises a major proportion, up to about 95% of water, and the rest of the material includes soap or other beard softeners, solvents, emulsifying and conditioning agents. The soap is preferably a stearic acid soap, made from commercial double or triple pressed stearic acid. However,

Marchesi at col. 2 lines 1 – 7 states: "The water dispersible surface active agent capable of forming a lather, may comprise a soap, a detergent, an anionic surfactant, a non-ionic

surfactant, or a mixture of one or more of these.” Schmidt at col. 3, lines 44 – 46 states: “In certain cases, the organic solvent can be in the form of one or more normally liquid organic surface active agents or surfactants, of nionic, anionic, cationic or amphoteric character.” At best, the cited references disclose that various types of surfactants can be used. The references, however, fail to teach or suggest the specific amounts of ionic surfactant for use in the present invention. Indeed, the cited references consistently suggest the use of soap and anionic surfactants which would teach away from the present invention. Applicants submit that the cited references fail to teach or suggest, with sufficient specificity, each and every element of the present invention. As such, Applicants request that this rejection be withdrawn.

With regard to all claims not specifically mentioned, these are believed to be allowable not only in view of their dependency on their respective base claims and any intervening claims, but also for the totality of features recited therein.

All claims are believed to be in condition for allowance. Should the Examiner disagree, Applicants respectfully invite the Examiner to contact the undersigned agent for Applicants to arrange for a telephonic interview in an effort to expedite the prosecution of this matter.

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### CONCLUSION

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the above mentioned rejections. Early and favorable action in the case is respectfully requested. Should any additional fees be required, please charge such fee to Procter & Gamble Deposit Account No. 16-2480.

Respectfully submitted,

THE GILLETTE COMPANY

By /Ronald Terk Sia/  
Ronald Terk Sia  
Registration No. 58,871  
(617) 463-4095

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Customer No. 27752